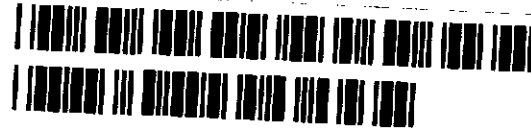


THE HONORABLE JAMES L. ROBERT



07-CV-01807-ORD

FILED
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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MISSION CAPITAL WORKS, INC., a
Washington Corporation,

Plaintiff,

vs.

SC RESTAURANTS, INC., a California
Corporation; RICHARD SANG, an
individual; RICHIE J.K. SANG, an
individual; BROOKES J.H. SANG, an
individual; SAMPSON RB, LLC, a California
limited liability company; PATRICIA READ,
an individual; GEORGE LEONG, an
individual; and AMBER SANG a/k/a
AMBER LAO, an individual,

Defendants.

Case No. C-07-1807 JLR

~~PROPOSED~~ FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER
OF ADDITIONAL CIVIL CONTEMPT
AND SANCTIONS AGAINST SC
RESTAURANTS, INC., BROOKES
SANG, AND RICHIE J. K. SANG

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I. INTRODUCTION

This matter came before the Court upon Mission Capital Works, Inc.'s ("MCW") motion for order to show cause why additional sanctions and civil contempt should not issue against defendants Richie J.K. Sang, Brookes J.H. Sang, and SC Restaurants, Inc. (collectively "defendants" or "contemnors"). The Court has considered the written submissions of the parties, the documents and records previously on file, the telephonic testimony taken at the hearing of November 21, 2008, and the arguments of MCW's counsel

**[PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER OF ADDITIONAL SANCTIONS AND CIVIL
CONTEMPT: CASE NO. C-07-1807 JLR - 1**

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1 and Brookes Sang.¹ The Court deems itself apprised in the premises, and finds from clear
 2 and convincing evidence that defendants have, once again, willfully failed to comply with
 3 the Court's orders and the limited receiver's requests. Defendants are and remain, therefore,
 4 in contempt of court. Accordingly, the Court issues this order of additional civil contempt
 5 and sanctions against defendants in order to compel them to comply.

6 **A. Procedural History**

7 **1. Contempt Order of August 18, 2008**

8 This matter came before the Court following its Order of August 18, 2008, in which
 9 this Court found defendants in contempt of court, upon clear and convincing evidence, and
 10 entered findings of fact and conclusions of law. Rather than set forth the procedural history
 11 prior to that Order, the Court refers to and incorporates by reference the Order herein.

12 **2. Motion for Additional Sanctions and Civil Contempt**

13 On October 9, 2008, MCW moved for an order to show cause why contempt and
 14 sanctions should not issue against defendants.² This motion was supported by the declaration
 15 of Colin Folawn.³ No response was received, and MCW submitted a reply memorandum
 16 requesting that the order be granted.⁴

17 On October 27, 2008, the Court issued a minute order, setting a hearing for
 18 November 21, 2008, at 9:30 A.M., to show cause why contempt and sanctions should not
 19 issue.⁵ The Court permitted defendants to respond to MCW's motion by November 17, 2008,
 20 and MCW was permitted to reply to any such response by November 19, 2008.⁶ The minute

21 ¹ Defendants have not appeared in this action, either *pro se* or through counsel, nor have they
 22 answered the complaint. Brookes Sang appeared telephonically during the hearing of
 November 21, 2008.

23 ² Dkt. 115.

24 ³ Dkt. 116.

25 ⁴ Dkt. 119.

26 ⁵ Dkt. 120.

⁶ *Id.*

1 order directed MCW to attempt to provide notice of the minute order and the hearing to
 2 Richie J.K. Sang, Brookes Sang, and SC Restaurants, Inc., by sending copies of the order to
 3 last known addresses, email addresses, and fax numbers.⁷ MCW was further directed to
 4 attempt notification by telephone.⁸ Counsel for MCW, Colin Folawn, submitted a
 5 declaration, evidencing that these directives were not only followed, but that they resulted in
 6 actual notice to the defendants.⁹

7 Richie J.K. Sang and Brookes Sang submitted declarations in response to MCW's
 8 motion for additional sanctions and contempt.¹⁰ MCW submitted a reply memorandum in
 9 support of its motion.¹¹

10 3. Hearing of November 21, 2008

11 The Court held a hearing on MCW's motion on November 21, 2008. MCW attended
 12 by and through its attorney, Colin Folawn. Also present was MCW's president and owner,
 13 Damon Maletta. Attending by phone was Brookes Sang, who was accompanied by a notary.
 14 No other party or attorney attended. MCW presented testimony from Kimberley Hanks
 15 McGair, the attorney for the limited receiver, Edward Hostmann, Inc.¹² Following the
 16 testimony of Ms. McGair, Brookes Sang testified telephonically on his own behalf. Based on
 17 the sworn testimony of the witnesses, the submissions of the parties, the arguments of
 18 counsel for MCW, and the arguments of Brookes Sang, the Court renders the findings of fact
 19

20
 21 ⁷ *Id.*

22 ⁸ *Id.*

23 ⁹ See Dkt. 124.

24 ¹⁰ Dkts. 121-122.

25 ¹¹ Dkt. 123.

26 ¹² This testimony was taken telephonically, with appropriate safeguards. FED. R. CIV. P. 43(a) (providing that a court may permit testimony in open court by contemporaneous transmission from a different location for good cause in compelling circumstances and with appropriate safeguards). Oregon notary Julie Durkin confirm Ms. McGair's identity and swore her in

1 and conclusions of law set forth below.

2 **II. FINDINGS OF FACT**

3 Having reviewed the sworn testimony of witnesses, submissions of the parties, and
4 court records on file, the Court makes the following findings of fact, which have been
5 established by clear and convincing evidence. The Court incorporates by reference the
6 findings of fact and conclusions of law entered in the Order of August 18, 2008. The instant
7 Order does not alter and is without prejudice to the Order of August 18, 2008.

8 1. On August 18, 2008, the Court found Brookes Sang, Richie J.K. Sang, and SC
9 Restaurants Inc. in civil contempt and issued conditional sanctions and compensatory terms
10 against them, in order to compel compliance with the Court's orders, including the orders
11 and requests relating to the appointment of the limited receiver, Edward Hostmann Inc. The
12 contemnors were permitted to purge themselves of contempt by taking the following actions:

13 (a) provide to the limited receiver an itemized and complete identification of how
14 moneys loaned to defendants by the plaintiff were received, deposited, allocated, and/or
15 spent;

16 (b) identify to the limited receiver all bank accounts and/or investment accounts
17 owned, controlled, and/or directed by defendants between 2006 to the present;

18 (c) provide to the limited receiver full access to defendants' (i) bank records, (ii)
19 financial documents, and (iii) residences;

20 (d) identify to the limited receiver all expenditures made by defendants between
21 November 9, 2007 to the present;

22 (e) identify to the limited receiver all assets and liabilities by defendants;

23 (f) provide to the limited receiver all financial records of defendants relating to
24 all bank accounts;

25
26 remotely.

1 (g) provide to the limited receiver all credit card processing reports of defendants
2 between November 21, 2006, and November 21, 2007;

3 (h) provide to the limited receiver all bank statements of defendants between
4 November 21, 2006, and November 21, 2007;

5 (i) provide to the limited receiver all cancelled checks of defendants between
6 November 21, 2006, and November 21, 2007;

7 (j) provide to the limited receiver electronic access to all bank accounts of
8 defendants;

9 (k) provide to the limited receiver all payroll reports of defendants between
10 November 21, 2006, and November 21, 2007;

11 (l) provide to the limited receiver all documents related to any and all assets of
12 SC Restaurants, Inc., and RB Sampson, LLC, including personal property, real property, and
13 vehicles;

14 (m) provide to the limited receiver all bank statements for any and all accounts
15 upon which defendants are account holders or signatories between November 21, 2006, and
16 November 21, 2007;

17 (n) provide to the limited receiver lists of all addresses held or used by defendants
18 since November 21, 2005;

19 (o) provide to the limited receiver credit card statements for any credit card held
20 by defendants between November 21, 2006 and November 21, 2007;

21 (p) provide to the limited receiver access to defendants' residences to inventory
22 all assets;

23 (q) pay to MCW the sanctions and compensatory terms set forth in the Order of
24 August 18, 2008; and

25 (r) move the Court for an order that contempt has been purged, including any and
26 all evidence to prove that provisions (a)-(q), above, have been fulfilled.

1 2. On September 6, 2008 and September 10, 2008, Brookes Sang emailed
2 Kimberley McGair, asking what was needed of him. Ms. McGair responded via email on
3 September 10, 2008, attaching a copy of the Order of August 18, 2008, and noting the
4 section of the Order that specifically identified the actions that the Sangs needed to take and
5 the information that the Sangs needed to provide in order to purge themselves of contempt.

6 3: On September 25, 2008, Brookes Sang emailed Ms. McGair, attaching a
7 document entitled "Reply to Request of Information," and stating that the document showed
8 "what we have and what we would need to purge the contempt order." The attached
9 document stated that the Sangs did not have the documents or information that they were
10 required to obtain and produce in order to purge the contempt order. The document
11 represented that SC Restaurants had no assets and that Sampson RB was "not party." It
12 further represented that Brookes Sang and Richie J.K. Sang each owned a car, and that they
13 had "Tax Liability," in an undisclosed amount. The document listed SC Restaurant's
14 liabilities as follows: "Many vendors, advertisers, and tax liability." The email message and
15 its attachment did not state what actions, if any, the Sangs had made to obtain the required
16 documents and information, nor whether they had made any effort to obtain documents and
17 information that the Sangs claim were seized by a prosecutor in California.


18 4. On September 29, 2008, Ms. McGair emailed Brookes Sang, noting that his
19 email and attachment provided almost no information and reminding that if documents could
20 be obtained from third parties, then such documents must be obtained. Ms. McGair further
21 stated that, if documents were in the possession of the district attorney, then the Sangs
22 needed to use their rights as defendants to inspect and/or copy the documents in order to
23 provide them to the receiver. Ms. McGair also stated that Brookes Sang's prior
24 communication showed no attempt to identify bank accounts or explain how moneys loaned
25 by the plaintiff were received, deposited, allocated, or spent.

26 5. On September 29, 2008, Richie Sang emailed Ms. McGair, stating that he and

1 Brookes were not part of the negotiations regarding the advancement of funds and that they
 2 did not sign any documents with Mission Capital. Richie Sang made additional arguments
 3 regarding the merits of the claims. He further claimed that he and Brookes Sang were
 4 "completely broke," could not pay for an attorney or necessities, and had ruined credit. He
 5 further claimed that Ms. McGair was "asking for things that we don't have or have the
 6 money to get." Richie Sang said that he wanted to cooperate and would try to locate the bank
 7 statements seized by the District Attorney, and he requested yet another copy of the order of
 8 August 18, 2008.

9 6. On September 30, 2008, Ms. McGair replied to Richie Sang, stating that his
 10 email message related to the claims and defenses in the case, issues which were best directed
 11 to counsel for MCW. Ms. McGair further stated that the Court's Order was clear as to the
 12 documents and information that needed to be produced and that the receiver was neither
 13 inclined nor able to modify the Order. Ms. McGair attached another copy of the Order, in
 14 response to Richie Sang's request.

15 7. The email messages from the Sangs, including their "Reply to Request of
 16 Information," neither comply nor substantially comply with the Order of August 18, 2008.

17 8. Brookes Sang testified that his attorney in another matter requested
 18 documents from the prosecutor, but ^{that} Mr. Sang ^{had not requested copies of those} admitted ~~that he did not recall any such~~
 19 ~~correspondence. The Court finds that Mr. Sang's testimony lacks credibility.~~ 

20 9. Despite the Order of August 18, 2008, the Court finds upon clear and
 21 convincing evidence that Brookes Sang, Richie J.K. Sang, and SC Restaurants Inc. have not
 22 provided the limited receiver with the required documents and information, nor have
 23 Brookes Sang, Richie J.K. Sang, and SC Restaurants Inc. provided credible evidence that
 24 they have taken any steps, let alone reasonable steps, to obtain the documents and
 25 information. Their continuing failure or refusal to provide the limited receiver with full
 26 access to their financial documents and information prevents the limited receiver from

1 inventorying their assets, evaluating expenditures, and tracing transfers of funds. This, in
2 turn, greatly impedes the limited receiver's to perform its duties under this Court's order.

3 10. Brookes Sang, Richie J.K. Sang, and SC Restaurants, Inc., continuing failures
4 can only be considered willful disregard. During this litigation, defendants have provided no
5 detail, few documents, and no credible explanation for their failures.

6 11. The Sangs claim that records were seized under a search warrant, but the
7 record shows no attempt to provide on their part or on their behalf to provide any
8 information, access, or even an inventory of documents and information that were previously
9 in their possession and which they now claim are possessed by a district attorney.
10 Regardless, defendants' opposition also provides no excuse for their failure to provide access
11 to their residences in order to inventory their personal assets.

12 12. Defendants have willfully refused to comply with the limited receiver order
13 and the limited receiver's requests. Defendants are in contempt of the Court's orders, the
14 limited receiver's requests, which issued with the authority of the Court, and the Order of
15 August 18, 2008.

16 III. CONCLUSIONS OF LAW

17 This Court has the inherent power to find a party in contempt, and it has the
18 discretion to determine whether to impose compulsory and compensatory sanctions against
19 an individual or entity found to be in contempt.¹³ The procedure for civil contempt is to set
20 an order to show cause hearing and to provide the contemnor an opportunity to respond
21 and/or comply with the order.¹⁴ That procedure has been followed twice in this case,
22 culminating most recently in the hearing of November 21, 2008. Due process considerations
23 have been met, as defendants were provided with actual notice and an opportunity to be
24

25 ¹³ *United States, et al. v. Asay, et al.*, 614 F.2d 655, 659 (9th Cir. 1980).
26

1 heard why sanctions and contempt should not issue. Brookes Sang and Richie J.K. Sang
2 submitted declarations opposing MCW's motion for additional sanctions and contempt.
3 Brookes Sang attended the hearing of November 21, 2008, by telephone.

4 The party seeking an order of civil contempt must show by clear and convincing
5 evidence that the alleged contemnor violated the court's order.¹⁵ The Court finds that MCW
6 has satisfied this burden.

7
8 MCW has demonstrated through clear and convincing evidence that defendants are in
9 continuing violation of the Court's orders. Defendants have failed to provide the limited
10 receiver with the necessary documents, information, and access necessary for it to perform
11 its duties and preserve the *status quo* and to trace assets. Indeed, defendants have failed to
12 take any steps to obtain the documents and information that must be provided. Defendants
13 continue to violate the Court's orders and are in contempt.

14
15 Substantial compliance can be a defense to contempt, but a party must take all
16 reasonable steps within its power to comply with a specific and definite court order.¹⁶ In this
17 case, no credible evidence shows or implies that defendants took all reasonable steps within
18 their power to comply with the order appointing the limited receiver or the limited receiver's
19 requests for documents, information, and access. To the contrary, the evidence shows that
20

21 ¹⁴ See *International Union, UMWA v. Bagwell*, 512 U.S. 821, 831-834 (1994).

22 ¹⁵ *Federal Trade Commission v. Productive Marketing, Inc., et al.*, 136 F. Supp. 2d 1096,
23 1107 (C.D. Ca. 2001). Federal courts may, at their discretion, punish the disobedience of any
24 lawful writ, process, order, rule, decree, or command by fine, imprisonment, or both, as
contempt of their authority. See 18 U.S.C. § 401.

25 ¹⁶ See *id.* at 1105; see also *Texaco Refining and Marketing, Inc.*, 1993 U.S. Dist. LEXIS
26 8931, at *3 ("a person fails to act as ordered by the court when he fails to take 'all the
reasonable steps within his power to insure compliance with the court's order.'") (*quoting*
Shuffler v. Heritage Bank, 720 F.2d 1141, 1146-47 (9th Cir. 1983)).

1 defendants have taken no real steps to comply with the Court's orders or purge themselves of
 2 contempt. There is no credible evidence that defendants have made any attempt to obtain
 3 copies of or access to the purportedly seized documents. Although an inability to comply
 4 with an order is ordinarily a defense to a charge of contempt, self-induced inability is no
 5 defense.¹⁷ Defendants' apathy and refusals to obtain or access documents and information is
 6 no defense. Defendants are in contempt of court. Therefore, the Court must determine the
 7 appropriate remedies.

9 Compulsory and/or compensatory sanctions, otherwise known as civil sanctions, are
 10 intended to: (1) coerce defendant into compliance with the court's order; and (2) compensate
 11 the complainant for losses sustained as a result of the contumacious behavior.¹⁸ Civil
 12 sanctions are appropriate when the "contemnor is able to purge the contempt by his own
 13 affirmative act and 'carries the keys of the prison in his own pocket.'"¹⁹ Conditional fines are
 14 appropriate civil sanctions when imposed to coerce compliance.²⁰ Courts have wide
 15 discretion to determine what compensatory contempt fine should be imposed.²¹ The Court
 16 orders the compulsory sanctions and compensatory terms set forth below.

17 See *United States, et al. v. Asay, et al.*, 614 F.2 655, 660 (9th Cir. 1980) (citing *In RE D.I. Operating Co.*, 240 F.Supp. 672 (D. Nev. 1965)).

18 *Id.* at 1112 (citing *United States v. Ayres*, 166 F.3d 991, 997 (9th Cir. 1999)).

19 *Id.* at 1112 (quoting *Ayres*, 166 F.3d at 997).

20 See *Productive Marketing, Inc.*, 136 F. Supp. 2d at 1111 (ordering civil sanctions to cover actual damages incurred as a result of the noncompliance and imposing \$250 per day, with the amount doubling with each additional day of noncompliance where a non-party failed to report and account for certain assets and misdirected certain other assets within the receiver's authority despite numerous requests by the receiver).

21 *Asay*, 614 F.2d at 660 (citing *United States v. United Mine Workers*, 330 U.S. 258, 304 (1947)).

1 **IV. ORDER OF CIVIL CONTEMPT AND SANCTIONS**

2 The Court finds that defendants Brookes Sang, Richie J.K. Sang, and SC Restaurants,
3 Inc. (collectively "defendants"), are in continuing contempt of Court for their failure to
4 provide documents, information, and access as required under the order appointing the
5 limited receiver and the limited receiver's requests. Coercive and compulsory sanctions are
6 necessary to obtain defendants' compliance. Accordingly, civil contempt sanctions are
7 ordered against defendants Brookes Sang, Richie J.K. Sang, and SC Restaurants, Inc., as
8 follows:

9 1. As of the date of entry of this Order, the Court imposes a conditional fine of
10 \$2,000.00 per day, per contemnor. This conditional fine will continue on a daily basis for 10
11 days unless defendants purge themselves of contempt by taking the actions set forth in
12 paragraph 5 below. The Court concludes that, although there is no statutory ceiling, the Court
13 is to consider the financial condition of the parties and the coercive effect of the conditional
14 fine. Accordingly, the Court finds that, at this time, the amount and extent of the conditional
15 fine described herein is appropriate. This conditional fine is to be paid to MCW within 30
16 days of the entry of this order.

17 2. The Court declines to impose imprisonment as a coercive sanction.

18 3. This Order is without prejudice to the Order of August 18, 2008, and Brookes
19 Sang, Richie J.K. Sang, and SC Restaurants, Inc., are hereby directed to pay all accrued
20 sanctions and civil contempt as ordered therein.

21 4. MCW has requested leave to file a subsequent petition for attorneys' fees and
22 costs incurred with its motion for civil contempt and sanctions. At this time, the Court does
23 not issue a ruling as to whether MCW is entitled to attorneys fees and costs. Although the
24 Court does not comment or rule on the propriety of such a motion, at this time, the Court will
25 hear any such motion for attorneys' fees and costs if MCW is inclined to bring it, either at a
26 time during this litigation or at its conclusion.

Jill
if Brookes Sang, Richie J.K. Sang and S.C.
Restaurants
do not purge
themselves of
contempt,

1 5. Defendants may purge themselves of contempt by completing the following
2 actions:

3 (a) provide to the limited receiver an itemized and complete identification of how
4 moneys loaned to defendants by the plaintiff were received, deposited, allocated, and/or
5 spent;

6 (b) identify to the limited receiver all bank accounts and/or investment accounts
7 owned, controlled, and/or directed by defendants between 2006 to the present;

8 (c) provide to the limited receiver full access to defendants' (i) bank records, (ii)
9 financial documents, and (iii) residences;

10 (d) identify to the limited receiver all expenditures made by defendants between
11 November 9, 2007 to the present;

12 (e) identify to the limited receiver all assets and liabilities by defendants;

13 (f) provide to the limited receiver all financial records of defendants relating to
14 all bank accounts;

15 (g) provide to the limited receiver all credit card processing reports of defendants
16 between November 21, 2006, and November 21, 2007;

17 (h) provide to the limited receiver all bank statements of defendants between
18 November 21, 2006, and November 21, 2007;

19 (i) provide to the limited receiver all cancelled checks of defendants between
20 November 21, 2006, and November 21, 2007;

21 (j) provide to the limited receiver electronic access to all bank accounts of
22 defendants;

23 (k) provide to the limited receiver all payroll reports of defendants between
24 November 21, 2006, and November 21, 2007;

25 (l) provide to the limited receiver all documents related to any and all assets of
26 SC Restaurants, Inc., and RB Sampson, LLC, including personal property, real property, and

1 vehicles;

2 (m) provide to the limited receiver all bank statements for any and all accounts
3 upon which defendants are account holders or signatories between November 21, 2006, and
4 November 21, 2007;

5 (n) provide to the limited receiver lists of all addresses held or used by defendants
6 since November 21, 2005;

7 (o) provide to the limited receiver credit card statements for any credit card held
8 by defendants between November 21, 2006 and November 21, 2007;


9 (p) provide to the limited receiver access to defendants' residences to inventory
10 all assets;

11 (q) pay to MCW all terms set forth in the Order of August 18, 2008, as well as the
12 conditional fine set forth in paragraph 1, above, as well as all accrued conditional fines,
13 sanctions, and compensatory terms under the Order of August 18, 2008; and

14 (r) move the Court for an order that contempt has been purged, including any and
15 all evidence to prove that provisions (a)-(q), above, have been fulfilled.

16 It is so ordered.

17 Dated this ^{3rd} day of December, 2008.

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THE HONORABLE JAMES L. ROBERT
UNITED STATES DISTRICT JUDGE

1 Presented By:

2 SCHWABE, WILLIAMSON & WYATT, P.C.

3
4 By: /s/ Colin Folawn

Colin Folawn, WSBA #34211

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[PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER OF ADDITIONAL SANCTIONS AND CIVIL
CONTEMPT: CASE NO. C-07-1807 JLR - 14

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